

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
IN ADMIRALTY**

GREAT LAKES INSURANCE SE,	:	
Plantation Place	:	Case No. 2:19-cv-04466-ER
30 Fenchurch Street	:	
London EC3M 3AJ	:	
United Kingdom	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
RAIDERS RETREAT	:	
REALTY CO., LLC	:	
P.O. Box 549	:	
Abington, PA 19001	:	
	:	
Defendant.	:	
	:	

GREAT LAKES INSURANCE SE'S NOTICE OF CLARIFICATION

COMES NOW the Plaintiff/Counter-Defendant, GREAT LAKES INSURANCE SE (hereinafter “GLI”), by and through its undersigned attorney’s, pursuant to the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Eastern District of Pennsylvania, and files this, its Notice of Clarification pertaining to the Supplemental Response in Opposition to Plaintiff’s Motion for Summary Judgment (ECF no. 81) filed by Defendant RAIDERS RETREAT REALTY CO., LLC (hereinafter “RAIDERS”). Further thereto, Plaintiff respectfully states as follows:

In the Supplemental Response in Opposition to Plaintiff’s Motion for Summary Judgment filed by Defendant RAIDERS, it is alleged that counsel for GLI “conceded that (1) New York law does not govern the extra-contractual counterclaims in the instant case, and that (2) Pennsylvania

law would apply to those causes of action if Great Lakes does not prevail on its Motion for Summary Judgment.” ECF no. 81, p. 25.

The undersigned counsel for GLI has no recollection of making such a concession. As recollected by the undersigned counsel, the only thing said was that it was the holding of the First Circuit in the *Andersson* case that GLI’s choice of law clause does not bar state law bad faith claims. *Great Lakes Ins. SE v. Andersson*, 66 F.4th 20, 27 (1st Cir.2023). But, if the words alleged by RAIDERS were actually used, then undersigned counsel for GLI obviously misspoke and hereby files this Notice of Clarification to make clear that, contrary caselaw from the First Circuit notwithstanding, GLI has not, does not, and will not concede that the Pennsylvania state law claims asserted by RAIDERS are permitted under the terms of the choice of law clause. As made clear in other cases, GLI has consistently enforced the precise verbiage of this choice of law clause to dismiss state law bad faith claims on other occasions. It did so in this case. Waiver, which is the intentional relinquishment of a known right¹, cannot be applied where counsel makes a misstatement which is quickly corrected within only seven (7) days, as soon as the mistake is brought to his attention.

On the other hand, if the doctrine of waiver is up for discussion, then it is clearly RAIDERS which has waived this issue by failing to raise it at any time before its appeal to the Third Circuit. In fact, the Third Circuit has already expressly held that the result of this silence by RAIDERS is that any objection to the interpretation of the words of the choice of law clause has been waived. *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*, 47 F.4th 225, 230 (fn. 1) (3d

¹ *In re Bestwall LLC*, 47 F.4th 233, 242 (fn. 11) (3d Cir.2022), *Democratic Nat. Committee v. Republican Nat. Committee*, 673 F.3d 192, 205 (fn. 11) (3d Cir.2012), *Reynolds v. Ellingsworth*, 23 F.3d 756, 763 (3d Cir.1994), *Erie Telecommunications, Inc. v. City of Erie, Pa.*, 853 F.2d 1084, 1095 (3d Cir.1988).

Cir.2022). The time for RAIDERS to argue this point was three (3) years, two (2) months, and (3) weeks ago (1,174 days). As the Third Circuit has expressly held, that is certainly a waiver.

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By: /s/ George R. Zacharkow
George R. Zacharkow

Dated: May 13, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Court using the CM/ECF System which will provide an electronic notice to all counsel, of record.

Respectfully submitted, this 13th day of May 2024.

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